JUDGE SULLIVAN

Kennedy, Jennik & Murray, P.C.
113 University Place, 7th Floor
New York, New York 10003
(212) 358-1500
Elizabeth M. Pilecki, (EP 5805)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAUNDRY, DRY CLEANING AND ALLIED WORKERS JOINT BOARD, UNITE/HERE

Plaintiff,

-against-

COMPLAINT

STAINLESS PARTNERS, INC.
d/b/a WORLD CLEANERS,

Defendant.

---x

Plaintiff, by its attorneys, Kennedy, Jennik & Murray, P.C., complaining of defendant, Stainless Partners, Inc., d/b/a World Cleaners, respectfully alleges as follows:

NATURE OF THE ACTION

1. This is an action arising under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, the Federal Arbitration Act, 9 U.S.C. § 9, and this Court's pendent jurisdiction, to confirm an arbitration award issued to remedy the breach by defendant of a collective bargaining agreement.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction to hear this claim under Section 301 of the LMRA, 29 U.S.C. § 185, and the Federal Arbitration Act, 9 U.S.C. § 9. Venue is proper in this court because plaintiff resides in New York, New York.

PARTIES

3. The Laundry, Dry Cleaning and Allied Workers Joint Board, UNITE/HERE ("Laundry Workers") is a labor organization as defined by Section 2(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. §152(5), and maintains its principal place of business at 275 Seventh Avenue, 11th floor, New York, New York 10001.

4. Defendant Stainless Partners, Inc. d/b/a World Cleaners ("World Cleaners") is an employer as defined by section 2(2) of the NLRA, 29 U.S.C. §152(2) and 301(a) of the LMRA, 29 U.S.C. §185(a). The address for Defendant World Cleaners is 740 Pine Street, Brooklyn, New York 11208.

AS AND FOR A FIRST CAUSE OF ACTION

5. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 4 as if fully set forth herein.

6. The Laundry Workers and World Cleaners are and were at all times material hereto parties to and bound by a collective bargaining agreement ("CBA"). World Cleaners is a commercial laundry.

7. World Cleaners and the Laundry Workers are parties to three agreements: the standard laundry industry-wide agreement effective November 28, 2003 through November 27, 2006, a Memorandum of Agreement dated December 4, 2003 and a Stipulation dated December 1, 2006. These three documents together constitute the Collective Bargaining Agreement ("CBA").

8. A dispute arose between the Laundry Workers and World Cleaners concerning three alleged violations of the CBA: 1) whether World Cleaners failed to pay employees for the thirty-five hours per week mandated by the CBA, 2) whether World Cleaners improperly laid off eight employees in February 2007, and 3) whether World Cleaners allowed supervisors to perform bargaining unit work where no emergency existed.

9. The Laundry Workers filed three grievances ("the Grievances") alleging violations of the CBA.

10. Article 35 of the CBA contains an arbitration provision. The three Grievances are all subject to the arbitration provision of the CBA.

11. The Laundry Workers submitted the three Grievances be heard before an arbitrator pursuant to Article 35 of the CBA.

12. A hearing was held on March 23, 2007 before the Honorable Beverly Gross.

13. On April 30, 2007, the arbitrator issued her opinion and award. The Laundry Workers received the April 2007 Award on May 2, 2007. The April 2007 Award is attached as Exhibit A.

14. In the April 2007 Award the Arbitrator determined *inter alia* that World Cleaners violated the Article 7.C(b) of the CBA by failing to pay the 35 hour weekly guarantee. The

Arbitrator also ordered the Laundry Workers to submit calculations reflecting the wages lost by employees.

15. The Arbitrator also determined that World Cleaners violated Article 1.B of the CBA when it allowed supervisors to perform bargaining unit work.

16. The Arbitrator did not determine whether the employees were improperly laid off. She convened a second hearing for the sole purpose of supplementing the record on this issue. The second hearing took place on May 17, 2007.

17. World Cleaners did not appear at the May 17, 2007 hearing despite notice having been sent to the company.

18. By the date of the second hearing World Cleaners had reinstated all but one employee. In an Award dated November 10, 2007 the Arbitrator determined that all of the seven employees who had been returned to work were to be paid $1443.75 each for the contractually guaranteed 35 hour work week from February 16 to March 22, 2007, the lay off period. The Arbitrator also ordered that Ivelisse Rodriguez be reinstated to her position with World Cleaners and that World Cleaners make her whole for any losses, including the 35-hour contractual guarantee. The November 10, 2007 Award is attached as Exhibit B.

19. The defendant World Cleaners has not complied with either arbitration award.

20. The defendant World Cleaners has not filed with any court to vacate either arbitration award.

21. Plaintiff seeks a judgment confirming both the April 30, 2007 Award and the November 14, 2007 Awards of the Arbitrator, and ordering World Cleaners to pay the employees

$1,442.75 each, except that Ms. Rodriguez be made whole for any losses, including the 35-hour contractual guarantee.

22. Plaintiff has no remedy at law, since only specific enforcement of the arbitration award will provide plaintiff with the relief requested.

AS AND FOR A SECOND CAUSE OF ACTION

23. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 22 as if fully set forth herein.

24. The arbitration award should be confirmed pursuant to Article 75 of New York's Civil Practice Law and Rules.

WHEREFORE, plaintiffs demand judgment:

1. Confirming the arbitration awards of the Honorable Beverly Gross;
2. Ordering the payment of unpaid wages as set forth in the arbitration award;
3. Prejudgment interest at 9% from November 14, 2007 for all monetary relief; and
4. Such other and further relief as the Court deems proper.

Dated: March 12, 2008

KENNEDY, JENNIK & MURRAY, P.C.

By: Elizabeth M. Pilecki (EP 5805)
113 University Place, 7th Floor
New York, New York 10003
(212) 358-1500

EXHIBIT A

---X

In the Matter of the Arbitration Between

WORLD CLEANERS **Case No. 3959, 3960**

and

LAUNDRY, DRY CLEANING & ALLIED WORKERS JOINT BOARD, UNITE HERE

---X

Hearing Date: March 23, 2007

Before: Beverly Gross, Esq., Arbitrator

Appearances:
For the Union: Bernhard W. Rohrbacher, Esq.
Alberto Arroyo, Sec.-Treas.
For the Employer: Janusz "Johnny" Sitko, Chief Engineer and Plant Manager
William J. Payne, Esq. (by phone call and e-mail dated February 26, 2007 and letter dated March 1, 2007 but not present at the hearing)

Preliminarily, I will address the Employer's threshold claim that these cases are not arbitrable because of the Union's failure to comply with the time requirements of the Collective Bargaining Agreement ("CBA") regarding the filing and processing of grievances, and Step Three in particular. However, the Step Three time limitations did not become operative because the Employer failed to provide a Step Two written response which, by the express terms of the CBA, is the trigger for all Step Three actions. Accordingly, the Employer will not be heard to complain of any alleged Union failures in this regard. The cases are arbitrable.

The Union put into the record several documents it designated as "joint exhibits". In the absence of the Employer from the hearing I view these documents as offered solely by the Union and accordingly I have re-marked them as such. 1) the Grievants laid off on February 16, 2007 are: Rosa Morocho, Lourdes Quilez, Rocio Pena, Ivelisse Rodriguez, Angelica Garcia, Rosalba Gomez, Demetria Lopez and Lidia Juarez [see U.Ex.Jt.3]; 2) all the Grievants were available to perform 35 hours of work in the three weeks prior to their layoff ; 3) the following managers performed bargaining unit work since February 16, 2007 although there was no emergency: Esperanza Chilchoca, Rosa Aracena De Cruz, Maria Guambana, Nelly Fabiola Herrera, Maira Maeda, Juana Reyes, Ana Tejeda and Dolores Vargas [see U.Ex.Jt.7]; 4)The issues submitted to me for resolution are set forth in Union Exhibit Jt.12 (Par. 2 corrected at the hearing for inadvertent omission of Grievant Rocio Pena):

> Did the Employer violate Article 7.C(b) of the Collective Bargaining Agreement by failing to pay bargaining unit employees for thirty-five hours of work per week at their regular rate? If so, what shall be the remedy?
>
> Did the Employer violate Article 40 of the Collective Bargaining Agreement by laying off Rosa Morocho, Rosalba Gomez, Lourdes Quiles, Ivelisse Rodriguez, Angelica Garcia, Demetria Lopez, Rocio Pena and/or [sic] Lidia Juarez? If so, what shall be the remedy?
>
> Did the Employer violate Article 1.B of the Collective Bargaining Agreement by having or letting supervisors perform bargaining unit work when there was no emergency because of the unavailability of employees? If so, what shall be the remedy?

According to Janusz Sitko, the Plant Manager, the Company lost 90% of its customers when it recently raised its rates by 3%. It needed to lay off some employees in order to "keep the business afloat". They were laid off in reverse seniority order until "the last." Although the Union didn't know it, Management had performed bargaining unit work for 7 years. The Employer could not afford to train new people or to bypass the managers who knew how to perform the work.

Rosa Moracho had been an employee in the sheet department since 2004, feeding sheets and towels. She testified that she saw the following managers (named in Union Exhibit Jt. 7, a 1/17/07 fax from the Employer to Mr. Arroyo) performing sheet department work throughout the day: Chilchoca, LaCruz, Herrara, Macas, Guambana. Maeda additionally did packing which had been her only task previously, Reyes packed full time as well as folding towels, Tejada separated towels, Vargas previously separated towels but now was also folding them.

Rosalba Gomez and Angelica Garcia, sheet department workers, testified that they had worked for the Employer continuously since August 8, 2004 and May 25, 2005 respectively until they were terminated. Alberto Arroyo, the union's Secretary-Treasurer, has been the Union Representative for the Employer for the past year. He testified that he had never agreed to the supervisors doing bargaining unit work and had not known they were doing that work . Alvaro Bottaro, the Union Representative for the Employer for one year previous to Arroyo, testified similarly.

Union Exhibits Jt. 8, 9, 10 and 11 are Time Card Reports prepared by the Employer, showing by the day and week the hours paid to active workers. They cover the period February 11, 2007 through March 4, 2007 and reflect the Grievants' hours and pay through February 16th, their termination date. In the right margin of each time card is a number entered by hand of the total hours worked and presumably paid per employee per week. The record does not reveal the writer of those numbers. In each case, the number of hours stated for the Grievants is less than the thirty-five hours guaranteed them under the Collective Bargaining Agreement.

Accordingly, I find the Employer has violated Article 7.C(b) and I direct World Cleaners to pay the Grievants the difference between what they received in the week of February 11, 2007 and what they should have received under the contractual guarantee. I direct the Union to compute these amounts and promptly to submit their calculations to me, along with their reasons, for a final award. The Employer may respond to any legal argument the Union might make. I retain jurisdiction for these purposes.

If the Employer's admission through Sitko - that supervisors had been doing unit work without the Union's knowledge-- was intended to establish the existence of a long-term past practice it did not accomplish that end. There is no evidence that there had been parallel layoffs in the past as in the instant case. Nor is there evidence that there was an emergency caused by the unavailability of employees at the time of the layoffs which, pursuant to Article 1.B., would have permitted the Employer to utilize managers to perform unit work. Whatever "emergency" might have existed because unit workers were unavailable was caused by the Employer's own act in laying off eight sheet department workers. I find that the Employer violated Article 1.B when it permitted supervisors to perform bargaining unit work.

Union Exhibit Jt.6 is a list of employees as of November 28, 2006, showing among other things their date of hire. Rodriguez and Quillez are shown to have seniority dating to November 2004, the most lengthy among the group of Grievants. However, there are several non-Grievant employees listed whose seniority date is earlier. I can, of course, determine from U.Jt.6 which employees were junior to the Grievants on November 28, 2006 but our operative date is 2 ½ months later. Also there is nothing on the record as to which employees were retained after February 16, 2006 [7]. I consider the record as insufficient to permit me to reach a determination on the question of whether the Grievants were laid off out of seniority as the Union claims. (U.Jt.3) I will convene another hearing on notice for the sole purpose of supplementing the record on this issue.

IT IS SO ORDERED

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Beverly Gross
Beverly Gross, Esq., Arbitrator

Dated: New York, New York
April 30, 2007

EXHIBIT B

--X

In the Matter of the Arbitration Between

WORLD CLEANERS **Case No.3959, 3960**

and

LAUNDRY, DRY CLEANING and ALLIED WORKERS JOINT BOARD, UNITE HERE

--X

Before: Beverly Gross, Esq., Arbitrator

Date of hearing: March 23, 2007 and May 17, 2007

On April 30, 2007 I issued an Award finding that the underlying grievances were arbitrable. I determined that another hearing would be necessary to establish on the record whether the eight named Grievants were laid off on February 16, 2007out of seniority order as the Union had grieved. That hearing was held on May 17, 2007. As was the case previously, the Employer failed to attend the hearing despite notice having been sent him.

By March 23, 2007, the date of the first hearing herein, the Employer had reinstated seven out of the eight Grievants, all but Ivelisse Rodriguez. All those Grievants, including Rodriguez, had been laid off without regard for their seniority, which was longer than that of several other employees who were retained, U.Exs.C,D. All the Grievants, named in my April 30th Award, are entitled to be paid for the contractually guaranteed 35 hours per week during the period of their improper layoff from February 16 to March 22, 2007. The amount for each is $1443.75, see U.Ex.E. Ms. Rodriguez is entitled to be reinstated and to be made whole for any losses, including the 35-hour contractual guarantee, she suffered from the improper layoff and failure to be reinstated previously

IT IS SO ORDERED

Beverly Gross
Beverly Gross, Esq., Arbitrator

Dated: New York, New York
November 10, 2007

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